Date on which Judgment was reserved : 31.8.2006
Date on which Judgment pronounced : 19.9.2006

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 150 of 2006

with

SPECIAL CIVIL APPLICATION NO. 151 & 152 OF 2006

WITH

CIVIL APPLICATION NO. 1488 OF 2006

IN

SPECIAL CIVIL APPLICATION NO. 150 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LUBI ELECTRICALS LTD. - Petitioner(s)
Versus
A T PAINTER - Respondent(s)

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Appearance :
MR KM PATEL for Petitioner(s) : 1,
Mr. Sunit Shah, GOVERNMENT PLEADER with Mr. L.B. Dabhi, AGP

for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1,

Mr. T.R. Mishra for Ahmedabad General Mazdoor Union.

Mr. Mukul Sinha for Gujarat Mazdoor Sabha. -

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 19/09/2006

COMMON CAV JUDGMENT

1. Heard learned Advocate Mr. K.M. Patel for petitioners, Mr. Sunit Shah, learned Govt. Pleader for the State Authority. Learned Advocates Mr. Mukul Sinha as well as Mr. T.R. Mishra for respective Union.

2. By filing Special Civil Application NO. 150 of 2006, 151 of 2006 and 152 of 2006, petitioners namely Lubi Electricals Ltd., Ahmedabad, Lubi Submersible Pump Ltd. And AP Motors (Hereinafter referred to as “the Management” for short) have challenged the judgment given by the Officer appointed under the Minimum Wages Act and Judge, Labour Court No. 14 Ahmedabad dated 19.12.2005 in Minimum Wages Application No. 51/98, 52/98 and 53 of 1998 which were filed by the applicant Government Labour Officer under section 20 (3) of the Minimum Wages Act, 1948. Under the impugned judgment, the labour court and the authority under the Minimum Wages Act, 1948 has partly allowed said applications and

directed the establishment to pay minimum wages prescribed under the Minimum Wages Act to all workmen working in the establishment within thirty days from the date of receipt of copy of said order.

3. As per the case of the petitioners in these petitions, the wages and other conditions of service of employees working in the factory of the petitioner are governed by negotiated settlement arrived at from time to time. According to the petitioner, apart from wages and allowances, there is a scheme for payment of production linked incentive wages which is under a settlement with the Ahmedabad General Mazdoor Union which represents majority of the workmen employed by petitioner. According to petitioner, in January, 1998, Gujarat Mazdoor Sabha entered the scene and with a view to getting membership of the workers employed by the petitioner indulged in unfair labour practice of instigating the workmen to resort to mass indiscipline, go slow,intimidation, etc. Therefore, various notices were displayed by petitioner bringing to the notice of the workmen that such mass scale indiscipline is not in the interest of the workers and the Company. On account of go slow in January, 1998 and two to three months thereafter, some

of the workers could not earn production linked incentive wages. Mazdoor Sabha made complaint to the Government Labour Officer that the wages paid to the workers are less than minimum wages. According to the petitioner, pursuant to the said complaint made by the Gujarat Mazdoor Sabha, the Government Labour Officer visited factory of the petitioner and he was explained the scheme of payment of wages by the petitioner but he has not examined the incentive register and according to the petitioner, on the basis of the truncated and lopsided inspection, he filed Minimum Wages Application No. 51 of 1998 before the Labour Court acting as Authority under the Minimum Wages Act. According to the petitioner, Mazdoor Sabha on the other hand, filed Special Civil Application No. 7814 of 1998 before this Court alleging that the petitioner is not paying minimum wages and prayed for consequential directions. Said petition came to be dismissed by this court by order dated 5.2.1999 on the ground of availability of alternative remedy which was challenged by the Gujarat Mazdor Sabha by filing LPA No. 256 of 1999 which too came to be dismissed by the Division Bench of this Court by judgment and order dated 27.7.2005

with a direction that the Minimum Wages Application filed under the Act be decided and disposed of within three months. Thereafter, according to the petitioner, in proceedings pending before the authority, one application was filed by Shri Dayaram Nathuram and others at Exh. 73 for being impleaded as party to the proceedings before the authority which was dismissed by the authority and against such dismissal of that application, Special Civil Application No. 20983 of 2005 was filed wherein this Court granted permission to those workmen to file their written arguments before the authority. Thereafter, the authority by order dated 19.12.2005, partly allowed application and directed the petitioner to pay difference of minimum wages in respect of those workmen who did not file purshis before the authority conceding that their wages were in excess of minimum wages. The petitioner has, therefore, filed this petition with the main grievance that the authority has erred in giving direction on an untenable premise that the production linked incentive wages cannot be included for computing minimum wages and that even if there is go-slow, minimum wages cannot be denied.

4. These petitions have been admitted and

ad.interim relief have been granted.

5. During the pendency of these petitions, an application being Civil Application No. 1488 of 206 is filed in Special Civil Application No. 150 of 2006 by (1) Dayaram Nathuram, (2) Dinesh Bhalabhai Dhodia and (3) Gujarat Mazdoor Sabha for joining as party respondent to petition which was ordered to be heard with the main matter.

6. Learned Advocate Mr. Patel appearing for the Company has made following submissions before this Court on behalf of the Company:

Shri Patel submitted that the wages which are being paid by the petitioner company to the employees are more than the minimum wages as fixed under the notification. His submission is that the Production Linked Wages are being paid by the petitioner CO. each month on 15th and other wages on 7th of each month. According to his submission, these wages are being paid on the basis of settlement arrived at between the petitioner Co. and recognized union. He submits that if the average wages worked out of both the payments of 7th and 15th, then, it will be double than the amount of minimum wages. According to his submission, workmen who are not giving normal work on the basis of settlement pro rata are not entitled for the

wages as per settlement. It was admitted that if the production linked incentives are excluded, then, some reduction in the minimum wages are bound to occur. He referred to the Government Order under section 10(3) for referring the matter for adjudication. According to him, relevant period of labour situation ultimately adversely affected the production of the petitioner company. If the components of wages, both of 7th and 15th are clubbed together, then, it is more than the minimum wages. According to him, even during the agitation period also, more than minimum wages have been paid to the workers. Union was not a party but written arguments were submitted and it was the contention of the union that the payments of 15th of each month amounts to over time wages and not the minimum wages. Period for which the recovery application was filed by the Government Labour Officer was from January, 1998 to March, 1998 under section 20(3) of the Act. This complaint was filed by the Government Labour Officer before the Authority under the Minimum Wages Act, 1948. He also submits that the incentives are also satisfying the ingredients of section 2(h) of the Minimum Wages Act wherein 'wages' have been defined under the Act. According to his submission,

section 25 of the Minimum Wages Act is not applicable to the facts of this case. According to him, as per the settlement, the minimum wages have not been reduced by the petitioner company and no workman has relinquished his right for reduction of minimum wages, therefore, settlement is not contrary to the provisions of sec. 25 of the Minimum Wages Act and, therefore, section 25 of the said Act is not applicable in the facts of this case. According to him, purshis were filed by the workmen before the Minimum Wages Authority that they are satisfied with the Scheme and therefore, order in question passed by the Authority under the Minimum Wages Act, 1948 is causing prejudice to the interest of those workmen. Application filed by the Government Labour Officer on 3.7.1998 was replied by the petitioner CO. It was the contention of the union that the amount of incentive wages is nothing but another shape of over time wages. By making reference to section 4, 12, 25 and 2(h) of the Minimum Wages Act, 1948, Mr. Patel submitted that the remuneration covers incentives. Reliance was placed by him on the decision of the Madras High Court in case of Madras Port Trust (By Chairman) and Claims Authority (Under Minimum Wages Act) reported in AIR 1957 Madras page

69 = 1956 II LLJ 490 Madras. According to his submission, the directions issued by the Authority under the Minimum Wages Act are bad since it has issued omnibus directions. He also placed reliance on the apex court decision in case of Accountant General,Bihar and another versus N. Bakshi, reported in AIR 1962 SC 505, para 13, in particular. According to his submission, remuneration cannot be considered to be in a limited sense but re components, pro rata basis or any kind of payments qua work carried out by the workman are covered by the definition of section 2(h) of the Minimum Wages Act, 1948. He emphasized again that all kind of remuneration qua work done by the workmen is to be considered as wages and part of wages which cannot be ignored. He submits that the settlement cannot be considered to be illegal or void because of section 25 of the Act. Reference in respect of section 10(3) is pending for adjudication before the concerned Tribunal. He also relied upon the decision in case of Municipal Committee Tara versus Harpal Singh and Another, 1998 (5) SCC page 635. In short, substance of the submissions made by the learned Advocate Mr. Patel is that the incentive wages is covered by the definition of 'wages' under the Minimum Wages

Act and the petitioner company is not paying less than the minimum wages but as the agitation of the Union Sabha was taking place, it resulted into such legal proceedings of filing application by the Government Labour Officer under section 20(3) of the Act. According to him, after all, the Court has to consider whether the wages which are being paid by the petitioner company are less than the minimum wages or not. According to him, looking to the record, the company is paying more than the minimum wages prescribed under the Minimum Wages Act and there is no dissatisfaction amongst the workmen about the settlement, therefore, view taken by the Authority under the Minimum Wages Act,1948 is contrary to the provisions of the Minimum Wages Act, 1948. He submitted that the Minimum Wages Authority has committed gross error in partly allowing the application filed by the Government Labour Officer. According to him, the Authority under the minimum Wages Act, 1948 ought to have dismissed the application filed by the Government Labour Officer. He referred to number of decisions harping upon the issue that ultimately, payments of incentive wages is covered by the definition of wages under section 2(h) of the Act, 1948. It is also his

submission that the definition of wages under section 2(22) of the ESI Act is not applicable to the facts of this case and, therefore, the Minimum Wages Authority has committed an error in relying upon the decision under the ESI Act and, therefore, order of the said authority is liable to be set aside.

7. In support of the aforesaid submissions, reliance was placed by Mr. Patel, learned Advocate for the company on the following decisions :

(1) Airfreight Ltd. v. State of Karnataka & Ors. Reported in 1999 II CLR 537.

(2) Harilal Jechand Doshi, Ghatkopar Hindu Sabha Hospital v. Maharashtra General Kamgar Union & Anr., 1999 II CLR 799. (Bombay High Court)

(3) HN Desai & Ors. v. M/s. Bhor Industries Ltd. & Ors. Reported in 1999 II CLR 803. (Bombay High Court)

(4) Management of Ramkrishna Pharmaceuticals, Hyderabad v. State Authority under Minimum Wages Act and Joint Commissioner of Labour, Hyderabad & Ors., reported in 2002 III CLR 416.(High Court of AP)

(5) Metal Equipment Jeedimetia, Hyderabad v. P. Venkateshwar Rao & Ors., 2002 III CLR 420. (High Court of AP)

(6) Bhagaband Colliery and Their Workmen reported in 1962 II LLJ page 356 (SC)

(7) Bank of India v. TS Kelawala & Ors., (1990) 4 SCC 744.

(8) Madras Port Trust (By Chairman) and Claims Authority (Under Minimum Wages Act) reported in AIR 1957 Madras page 69 = 1956 II LLJ 490 Madras.

(9) 1998 (5) SCC 635.

8. Except the submissions recorded herein above and the decisions referred to herein above, no other decision was cited by Mr. Patel before this Court in support of his submissions.

9. As the Civil Application NO.1488 of 2006 for being joined as a party respondent to petition was ordered to be heard with the main matter, therefore, I have permitted learned Advocate Mr.Mukul Sinha as well as learned Advocate Mr. T.R. Mishra to make submissions on behalf of the respective unions and they have made their submissions as under:

10. Learned Advocate Mr.T.R.Mishra appearing for the General Mazdoor Union has relied upon the settlement and has submitted that the settlement has taken sufficient care to protect the minimum wages of each workmen. He also submitted that due to go slow by workmen

agitated through another Union Mazdoor Sabha, difficulty had started. Workmen are working on piece rated basis and they are earning more than minimum wages from the Company and no workman is having grievance against the settlement and the settlements are continuing by periodical change from 1982, therefore, his submissions are supporting the submissions made by the learned Advocate Mr. Patel.

11. Learned Advocate Mr.Mukul Sinha appearing for the Mazdoor Sabha has submitted that the period of recovery from January, 1998 to March, 1998 and the period of agitation, according to the petitioner, page 53, paragraph 2 of the reply, suggests alleged agitation from March, 1998 onward. SO, this recovery application filed by the Government Labour Officer is not relating to the period of agitation but prior to the period of agitation, so, the allegation made by the petitioner against the Mazdoor Sabha cannot be accepted. He referred to page 30 para 4 and submitted that out of total workmen, 132 workmen have submitted purshis about no objection for receiving wages from the petitioner company. He submits that more than 800 workmen are working with the petitioner co. but only 132 workmen have given such

purshis for giving up their statutory right. He submits that the fact of partial lock out has not been declared. He submitted that guarantee has been given by the statutory provisions that each of the workmen will receive at least minimum wages fixed under the notification from the employer. He submitted that in notification fixing minimum wages, the words " work norms" or '"out put" is not mentioned or not taken into account. He submits that the minimum wages have been fixed under the notification without considering daily out put / norms. He submits that the incentive wages cannot be covered under the definition as per section 2(h) of the Minimum Wages Act. He submits that the incentive starts when compulsion end. There is no compulsion in incentive, if anybody wants to work on the basis of incentive scheme, then, such workman can work on that basis. He submits that looking to the terms of settlement, incentive is putting compulsion on each work to give particular quantity of work or out put and if it is not given by a particular workman, then, such particular workman will not receive even the minimum wages guaranteed under the Scheme of the Minimum Wages Act. According to his submission, the incentive scheme is defeating

the object of Minimum Wages Act and is, therefore, contrary to the provisions of the Minimum Wages Act. He submits that the minimum wages fixed under the notification is having only two components and such incentive wages is not one of such two components under the Minimum Wages Act. He also submits that the minimum wages is the statutory mandate which cannot be given good bye under the pretext or guise of incentive wages. In support of his submissions, he relied upon the decision of the Apex Court in case of Sanjit Roy v. State of Rajasthan, reported in AIR 1983 SC 328 = 1983 LIC 312. He has drawn attention of this Court to para 5 of said decision which will be considered afterwards.

12. He also placed reliance upon the decision in case of Somiben Mathurbhai Vasava v. Ms.Lalji Hakku, reported in 25(1) GLR page 388 and submitted that whatever wages paid on 7th are considered to be the wages and pay slips are being issued by the petitioner for such payments made on 7th but for the payments made on 15th of each month in the name of incentive wages, no such pay slips are being issued by the petitioner co. to the workmen concerned. He placed reliance upon the apex court decision in case of M/s. Whirlpool of India Ltd. Versus Employees' State Insurance

Corporation, reported in 2000 AIR SCW 821 and submitted that the definition under sec. 2(22) of the ESI Act is para materia same and, therefore, in ESI Act, incentive payments are not covered under the definition of wages under section 2(22) of the ESI Act. He submits that on the amount of incentive wages, PF contribution is not being deducted by the petitioner co. On incentive wages, petitioner company is also not making any ESI Contribution. He emphasized that the compulsory part of the wages is below the rates prescribed under the Minimum Wages Act. He submits that if the part of the wages paid on 15th in the name of incentive wages are excluded from the total of the wages paid on 7th and 15th respectively, then, net result is that the workmen are receiving the wages which are below the rates prescribed under the Minimum Wages Act. According to him, such theory adopted by the petitioner co. is violative of the notification of minimum wages and petitioner co. cannot be permitted to do so under the guise of incentive wages.

13. Replying the submissions made by the learned Advocate Mr. Sinha, learned Advocate Mr. Patel submitted that as per page 30, total 758 workmen have given purshis and according to him, the decision in case

of Sanjit Roy, (supra), relied upon by Mr. Sinha would not apply to the facts of the present case. He submits that while considering the case, payments made on 15th cannot be ignored and the decision of the apex court in M/s. Whirlpool of India Ltd. Versus Employees' State Insurance Corporation reported in 2000 AIR SCW 821 is not applicable. He also submits that for the payments made on 15th, petitioner co. is issuing pay slip in favour of each workman and, therefore, according to his submission, the Authority under the Minimum Wages Act, 1948 has committed gross error in partly allowing the application.

14. Except the submissions recorded herein above, and decisions referred to above, no other submission have been made and no other decision was cited by either of the Advocates before this Court.

15. Before adverting to the facts of the matters on hand, it would be proper to refer to the relevant provisions of the Minimum Wages Act, 1948. Wages have been defined as per section 2(h) of the Minimum Wages Act, 1948. Same is reproduced as under:

2(h) 'wages' means all remuneration, capable

of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include -

(i) the value of

(a) any house accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entitled on him by the nature of his employment; or

(v) any gratuity payable on discharge; “

16. Section 3 of the Minimum Wages Act, 1948 relates to fixing of minimum rates of wages. Section 4 provides for minimum rate of wages. Same is, therefore, reproduced as under:

“**4. Minimum rate of wages.-** (1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 may consists of

(i) a basic rate of wages and special

allowances at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as 'the cost of living allowance allowance') or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so autorized; or

(iii) an all inclusive rate allwing for the basic rate, the cost of living allowance and the cash value of the concessions, if any

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government. “

17. As per the decision in Karnataka Film Chamber of Commerce, Bangalrore v. State of Karnataka, 1986 Lab IC 1890, ILR 1986, Kant, 2183, Section 4 is a definite indication that basic wages is an integral part of the

minimum wages. It is not correct to say that a minimum wages under section 4(1) necessarily should consist of basic wage and dearness allowance. The language of section 4 does not lent itself to such an interpretation. On the plain terms of section 4(1) it is clear that the payment of dearness allowance would arise only if the basic wage fixed for a category of workmen fell short of the minimum wages which the State Government has to fix taking into consideration the needs of the workers' family consisting of three consumption units.

18. Section 12 of the Act relates to Payment of minimum rates of wages. It is reproduced as under:

“12. Payment of minimum rates of wages.-(1) Where in respect of any scheduled employment a notification under section 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed.

(2) Nothing in this section shall affect the provisions of the Payment of Wages Act, 1936

(4 of 1936). “

19. Section 13, 14 and 15 of the Minimum Wages Act, being relevant for the purpose of deciding this petition are reproduced as under:

> **“13. Fixing hours for normal working day, etc.** [(1)]. In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may -
> (a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;
> (b) provide for a day of rent in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
> (c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

(2) The provisions of sub section (1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed:-

(a) employees engaged on urgent work, or in any emergency which could not have been foreseen or prevented;

(b) employees engaged in work in the nature of preparatory or compulsory work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

(c) employees whose employment is essentially intermittent;

(d) employees engaged in any work which for technical reasons has to be completed before the duty is over;

(e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (c) of sub section (2), employment of a employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, then, hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

14. **Overtime.**-(1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at

the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

(2) Nothing in this Act shall prejudice the operation of the provisions of section 59 of the Factories Act, 1948 (63 of 1948) in any case where those provisions are applicable.

15. Wages of worker who works for less than normal working day. -If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period of less than the requisie number of hours constituting a normal working day, he shall save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day.

Provided however that he shall

not be entitled to receive wages for a full normal working day-

(i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and

(ii) in such other cases and circumstances as may be prescribed.”

20.Now, section 25 of the Act is relating to contracting out. Sec. 25 of the Act is nullifying any contract or agreement,whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him. Same is, therefore, reproduced as under, being relevant for the purpose of deciding controversy.

“**25.Contracting out.**- Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee

> either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this A ct shall be null and void in so far it purports to reduce the minimum rate of wages fixed under this Act. “

21. Now, looking to the facts of the case before hand, as per the case of the petitioner, the wages and other conditions of service of employees working in the factory of the petitioner are governed by negotiated settlement arrived at from time to time. According to the petitioner, apart from wages and allowances, there is a scheme for payment of production linked incentive wages which is under a settlement with the Ahmedabad General Mazdoor Union which represents majority of the workmen employed by petitioner. According to petitioner, in January, 1998, Gujarat Mazdoor Sabha entered the scene and with a view to getting membership of the workers employed by the petitioner indulged in unfair labour practice of instigating the workmen to resort to mass indiscipline, go slow,intimidation, etc.

Therefore, various notices were displayed by petitioner bringing to the notice of the workmen that such mass scale indiscipline is not in the interest of the workers and the Company. On account of go slow in January, 1998 and two to three months thereafter, some of the workers could not earn production linked incentive wages. Mazdoor Sabha made complaint to the Government Labour Officer that the wages paid to the workers are less than minimum wages. According to the petitioner, pursuant to the said complaint made by the Gujarat Mazdoor Sabha, the Government Labour Officer visited factory of the petitioner and he was explained the scheme of payment of wages by the petitioner but he has not examined the incentive register and according to the petitioner, on the basis of the truncated and lopsided inspection, he filed Minimum Wages Application No. 51 of 1998, 52 of 1998 and 53 1998 before the Labour Court acting as Authority under the Minimum Wages Act. According to the petitioner, Mazdoor Sabha on the other hand, filed Special Civil Application No. 7814 of 1998 before this Court alleging that the petitioner is not paying minimum wages and prayed for consequential directions. Said petition came

to be dismissed by this court by order dated 5.2.1999 on the ground of availability of alternative remedy which was challenged by the Gujarat Mazdor Sabha by filing LPA No. 256 of 1999 which too came to be dismissed by the Division Bench of this Court by judgment and order dated 27.7.2005 with a direction that the Minimum Wages Application filed under the Act be decided and disposed of within three months. Thereafter, according to the petitioner, in proceedings pending before the authority, one application was filed by Shri Dayaram Nathuram and others at Exh. 73 for being impleaded as party to the proceedings before the authority which was dismissed by the authority and against such dismissal of that application, Special Civil Application No. 20983 of 2005 was filed wherein this Court granted permission to those workmen to file their written arguments before the authority. Thereafter, the authority by order dated 19.12.2005, partly allowed application and directed the petitioner to pay difference of minimum wages in respect of those workmen who did not file purshis before the authority conceding that their wages were in excess of minimum wages. The petitioner has, therefore, filed this petition with the main grievance that the

authority has erred in giving direction on an untenable premise that the production linked incentive wages cannot be included for computing minimum wages and that even if there is go-slow, minimum wages cannot be denied.

22. Authority under the Minimum Wages Act, 1948 has considered the only question as to whether the incentives wages which are being paid by the establishment would be included in the definition of “wages” as defined under the Minimum Wages or not. For that purpose, the Authority considered the definition of wages under section 2(h) of the Minimum Wages Act, 1948 as referred to above and then considered that all the allowances are covered by the definition of wages under section 2(h) of the Act and it also considered that the incentives paid by the establishment are not the allowances, therefore, incentives cannot be treated or considered as minimum wages. It also considered the object of the Minimum Wages of the unorganized workmen, that the justification for statutory fixation of minimum wages is obvious. Such provisions which exist in more advanced countries are even necessary in India where workers' organizations are yet poorly developed and

the workers' bargaining power is consequently poor. After taking into consideration the decision in Manibhai Sadaram Patel versus State of Gujarat, 13 GLR 66; (2) Hindustan Times Ltd. Versus its workmen, 1963 ILJ SC page 108, the authority held that the workman working in an establishment or industry cannot be paid the wages which are lesser than the minimum wages prescribed under the Minimum Wages Act, 1948 and after considering the plea of the petitioner that the wages and other conditions of service of employees working in the factory of the petitioner are governed by negotiated settlement arrived at from time to time, the Authority considered that the settlement dated 13.10.1997 produced at Exh. 88, clause 1.8 thereof clearly says that the settlement shall remain in force subject to the provisions of the Minimum Wages Act, 1948 and during that period, whatever rise in wages will be paid but it shall not be lesser than the Minimum Wages and whichever is higher will be paid. Thereafter, considering the various legal provisions and section 2(h), 4, 13 to 15 and 25 of the Act, the Authority directed the petitioner to pay the Wages as per Minimum Wages Act, 1948.

23.I have perused the order passed by the

Authority under the Minimum Wages Act, 1948 in respect of all the three matters. The period for which recovery application was filed under section 20(3) of the Act was from January, 1998 to March, 1998. Government Labour Officer has prepared Chart of difference of minimum wages payable by the petitioner CO. Vide Exh. 12, reply was filed by the petitioner Co. wherein it was contended that the workmen are required to work eight hours and they should have to give particular out put as per the norms decided in the settlement. It is also contended that if the workmen would work as per the norms decided in the settlement, then, they would receive double the wages for the same period. Vide Exh. 19, petitioner has produced pay register and incentive register from October, 1997 to March, 1998 which is exhibited from Exh. 95 to 111. Vide Exh. 21, total 132 workmen have given purshis that they are not disputing about the non receipt of minimum wages. Number of workmen have given purshis similarly as mentioned in paragraph 4 of the order. Vide Exh. 26, the Government Labour Officer has produced statements of workmen which were obtained during the course of his visit of the petitioner Co. Vide Exh. 29 also, copy of certain statements were

produced before the Minimum Wages Authority. Settlement was produced vide Exh. 48 before the Minimum Wages authority. Vide Exh. 24, applicant was examined. Vide Exh. 58, witness Rameshbhai Rajeshwar has given deposition on behalf of the applicant, and thereafter, vide Exh. 71, one witness Jagdishbhai Thakor was examined by petitioner Co. on record. The Ahmedabad General Mazdoor Union and General Sabha both were allowed to file written arguments before the Minimum Wages Authority. Thereafter, matter was heard by the Minimum Wages Authority. Both the unions filed written arguments vide Exh. 632 and 642 respectively before the authority under the Minimum Wages Act and the Management filed written submissions vide Exh. 637.

24.Thereafter, the Minimum Wages Authority has examined the matter in light of various provisions of the Minimum Wages Act. After considering the definition of wages under section 2(h) of the Minimum Wages Act, 1948, the authority came to the conclusion that the incentive wages are not the allowances and it cannot be considered to be the minimum wages as defined under sec. 2(h) of the Act and therefore, not covered by the definition of wages u/s. 2(h) of the Act. Decision in case of Manibhai Sadaram Patel versus State of

Gujarat reported in 13 GLR page 66; Hindustan Times Ltd. Versus its workmen, reported in 1963 ILJ SC 108 have been considered by the authority. After considering the aforesaid two decisions, the authority observed that clear object of the law is to the effect that the wages prescribed under the Minimum Wages Act must be received by each and every workman working in an industry or establishment in any circumstances meaning thereby, wages which are lesser than the minimum wages prescribed under the Minimum Wages Act cannot be paid to the workman working in an establishment or industry in any circumstances. Thereafter, the authority considered that the incentive wages are being paid by the establishment on the basis of the settlement of 1982 but the minimum wages fixed under the notification are subsequent to that. Authority considered section 25 of the Act and came to the conclusion that if the incentive wages are excluded or if the workman may not give the out put required to be given as per settlement, then, he will not receive minimum wages guaranteed under the notification issued under the Minimum Wages Act, 1948. This fact has been admitted by the Management that if the workman will not work in terms of the settlement, then, his

per day wages or monthly wages must be less than the minimum wages fixed under the notification. If the out put given by the workman is less, then, wages also would be less compared to the out put which ultimately would result into less payment then the minimum wages. The authority therefore, considering the settlement Exh. 88 in light of the provisions contained in section 25 of the Act, observed that such contract/settlement is reducing minimum wages which cannot be considered to be legal and valid. Thereafter, authority considered section 17 of the Minimum Wages Act and observed that even the daily rated employees are also entitled for the minimum wages and the management cannot pay the wages which are lesser than the minimum wages. The Authority also observed that if the incentive wages paid on 15th of month are not included, then, the payments of 7th would be lesser than the minimum wages. Authority has considered settlement dated 13.10.1997 vide Exh. 88. Clause 1.5 wherein it is specifically agreed between the parties that so long as the settlement remains in existence, whatever wages paid to the workmen will not be less than minimum wages but whatever more than minimum wages should have to be paid to

workmen. The authority also considered that the minimum wages which have been fixed cannot be linked with production or incentives. Such wages or incentives or production cannot merge with minimum wages fixed under the notification. Authority further observed that under the guise of incentive wages or production wages, minimum wages fixed under the notification cannot be reduced by the management. Authority also observed that the incentive wages cannot be considered to be the part of minimum wages.

25. Authority also considered various decisions of the apex court as well as the High Court. Authority considered the decision of Hon'ble apex court in Workmen represented by Secretary versus REPTAKOS BRETT & CO. LTD. AND ANOTHER reported in 1992 (1) SCC page 290 wherein the apex court has observed that the employer is obliged to pay minimum wages under all circumstances payment which is lesser than the minimum wages would amount to forced labour and industry should not have to be continued if the industry is not able to pay minimum wages to a workman. The authority has also considered the decision of the Division Bench of this Court in case of Somiben Mathurbhai Vasava versus Lalji Hakku Parmar Leather Works Company, reported in

1984 (1) GLR 388 wherein it has been held that no establishment can deny to pay wages at the minimum wages on the basis of any agreement and if such agreement/settlement has been arrived at, then, such agreement is illegal and void ab initio as it is depriving the workman of his legal right to get minimum wages and the management is bound to pay complete minimum wages as per section 12 and 17 of the Minimum Wages Act. The authority has also taken into consideration the decision of the apex court in case of Sanjit Roy (supra) wherein the apex court has considered that minimum wages are not fixed on the basis of quantity or out put and, therefore, merely the workman has not carried out work as per agreement or settlement, payment cannot be made to the workman which is less than the minimum wages even in case wherein quantity is not maintained or out put is not given as per the requirement of the settlement. It was admitted by the management before the authority that those workmen who were not giving particular out put of work or quantity, they were receiving wages which are lesser than the wages prescribed under the notification. Thereafter, the authority has considered that the petitioner Co. has paid

less than the minimum wages to the workmen for a period from January, 1998 to March, 1998 and for that, the management shall have to pay difference of wages to such workmen those who have not filed purshis before the minimum wage authority. The authority has considered that those workmen who have given purshis that they are relinquishing their right to receive difference of wages are not entitled for the benefit of the order and are not covered by the order passed by the minimum wages authority but those workmen who have not given such purshis are entitled for difference of wages from the petitioner for the period from January, 1998 to March, 1998.

26. I have considered the reference dated 10th June, 1998, application filed by the GLO and reply given thereto by the petitioner CO. as well as deposition of workmen as well as witnesses for the management. It is required to be noted that the petitioner has not produced copy of settlement before this Court.

27. I have considered submissions made by the learned Advocates for the parties. I have also considered the submissions made by the Government Pleader Mr. Shah with learned AGP Mr. Dabhi who have supported the order of the authority under the Minimum Wages Act, 1948.

I have also perused the order passed by the Minimum Wages Authority in respect of all the three matters. The justification for statutory fixation of minimum wages is obvious. Such provisions are existing in more advanced countries are even more necessary in India where workers' organizations are yet poorly developed and workers' bargaining power is consequently poor. The concept of term 'wages' as per section 2(h) suggests that it is a consideration or a *quid pro quo* for the services rendered by the employee. The definition of wages in the Minimum Wages Act, 1948 may be simplified as under:

(1) Wages shall be by way of remuneration;

(2) Remuneration shall be express in terms of money;

(3) Remuneration is payable only if the terms of employment express or implied were fulfilled;

(4) Remuneration is payable to a person employed in respect of his employment or of work done in such employment. Definition term of wages has a composite meaning which will include all remuneration contemplated by the Act. In case of Bidi Bidi Leaves and Tobacco Merchant's Association versus State of Bombay, AIR 1962 SC 486, it was observed by the apex court that postulates binding

character of the other terms of contract and brings within the purview of the Act only one term and that relates to wages and no other. That being so, it is difficult to hold that by implication from basic concept of term 'wages' can be ignored and the other terms of contract can be dealt with by notification issued under this Act. Where attendance bonus is paid under a contract other than the contract of employment, it is not the wages and the employer is not entitled to add that bonus amount to the amount paid to workman for the purpose of minimum wages.

28. In Maganese Ore (India) Nagpur Bharwell Mine, Balaghat v. Bisen and others, reported in 1978 Lab IC 1376, the Division Bench of Madhya Pradesh High Court observed as under in para 4 of the judgment:

“The requirement that the workmen should attend the work for a minimum number of days during a quarter, does not appear to us to be a part of the contract of employment. This requirement is created by the contract under which the bonus is paid and not by the contract of employment. It cannot therefore be said that bonus would be payable to a workman if the terms of contract of employment, express or implied were fulfilled within the definition of wages contained in

the Minimum Wages Act. In our opinion, threfore, the attendance bonus paid to the workmen is not wages. Minimum rate of wages notified under Sec. 4(1)(iii) of the Act is an inclusive rate allowing for the basic rate of wages, the cost of living allowance and the cash value of the concessions, if any. The minimum rate fixed under this provision will not include the bonus of the type with which we are concerned in the instant case. We therefore agree with the opinion of the Industrial Tribunal cum Labour Court that the petitioner is not entitled to add the bonus to the amount of wages paid to the workmen for the purpose of minimum wages. “

29. In Upper India Paper Mills Versus JC Mathur, AIR 1959 Allahabad, page 664, defendant was employed by the petitioner. It was held that he could not be deprived of his claim for recovery of wages merely because the plaintiff did not choose take any work from him.

30. Section 4 of the Minimum Wages Act, 1948 referred to above provides for minimum rate of wages. Two components are covered under section 4 while fixing minimum rate. One is a basic rate of wages and special allowances at a rate to be adjusted, at such intervals and in such manner as the appropriate

Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers meaning thereby, that the minimum rate of wages wherein only two components are included. In the facts of the case before hand, whole difficulty started due to misunderstanding on the part of the management. Definition of wages under sec. 2(h) of the Act is altogether different when minimum wages are fixed as per section 4 of the Minimum Wages Act. As per definition of wages under sec. 2(h) of the Act, 'wages' includes any kind of remuneration for which work has been done by workman , workman can claim such wages from the employer. Both are having different and distinct meaning, therefore, incentive wages cannot be covered by the definition of wages under section 2(h) of the Act. Important question which has been rightly examined by the Authority under the Minimum Wages Act, 1948 is that the minimum rate of wages prescribed under the Notification should have to be paid by the Management to the workmen. For that, no bargaining is permissible at the hand of the employer. Real meaning is that the employer may pay any amount of remuneration or may agree to pay any amount of incentive wages

under any such scheme but the management should not have to ignore these two components of the minimum rate of wages fixed under the notification. Therefore, the real question which is to be answered by the petitioner has not been answered by the Management. Incentive wages may be paid to workmen but each and every workmen will not be able to get it since it will be given to those workmen who will deliver or complete the work as per the settlement. In the notification fixing minimum rate of wages, no such quantity or out put is to be given by the workman to management. It is relating to normal working hours, normal production and normal rate of wages. There is no compulsion upon the workman for receiving the minimum rate of wages to give more quantity and/or out put or to work under particular norms fixed under the settlement. SO, the management has not properly understood the Scheme of the Minimum Wages Act. It is the contention that they are paying incentive wages over and above the minimum wages which comes to double the wages and, therefore, if any workman is not able to give particular out put as per settlement, then, he is not entitled to the wages fixed under the notification and they are paying it on the

basis of the settlement arrived at between the petitioner company and recognized union. This theory is nothing but colourful devise adopted by the management for taking extra work from the workmen with temptation to have incentive wages from the employer. It is for the workman to work on the incentive basis or not. Management cannot compel workman to work on incentive basis as per settlement. This compulsion part is against the object of the Act. If the workman is agreeing to work on incentive basis, he may work and give out put as per the incentive scheme but that does not mean that if the workman is unable to do work as per such norms under the settlement or if he is not willing to do so, then, such workman will not be entitled to minimum rate of wages fixed under the notification. Therefore, the scheme of incentive wages which has been agreed by recognized union with the employer wherein one of the component of minimum wages fixed u/s.4 of the Minimum Wages Act has been merged with the incentive wages is colourful devise and nothing but a modified mode of exploitation depriving workmen of their right to claim and receive wages fixed under the notification. Management cannot be permitted to do so on the basis of any alleged settlement which is

ultimately reducing minimum wages fixed under the notification. In the facts of the present case, as admitted by the Management before the Authority under the Minimum Wages Act, if the workman is not giving particular production/quantity or out put, then, his wages will be less than even the minimum wages fixed under the notification so, workman will not be entitled to receive minimum wages if he is not agreeing to the terms of settlement to be performed by him. This kind of settlement or condition incorporated in such settlement is violative of section 25 of the Minimum Wages Act and therefore, authority has rightly arrived at the conclusion that such settlement is violative of section 25 of the Minimum Wages Act, 1948 and, therefore, such settlement is bad in law and contrary to the objects of the Act.

31. Real aspect has been examined by the Authority under the Minimum Wages Act, 1948 on the basis of the record produced by the Government Labour Officer. Application was filed by the Government Labour Officer on the basis of the record which was received from the Management at the time of visiting the establishment. Therefore, looking to the record itself, certain workmen were receiving

wages which were less than the minimum wages fixed under the notification. The management has not disputed these facts or record which was inspected by the Government Labour Officer at the time of his visit and, therefore, authority has considered the record of the management as well as pay register and came to the conclusion that the management has been paying wages lesser than the wages fixed under the notification to those workmen who were not ready to give work on incentive basis under the settlement. This being a finding of fact recorded by the authority under the Minimum Wages Act and since the petitioner is not disputing this aspect in a way by submitting that not a single workman is receiving wages less than the minimum wages and that since petitioner is not submitting that all the workmen are being paid the wages as per the wages fixed under the notification irrespective of the fact that the workman has given particular out put or production as per settlement, it cannot be said that the findings recorded by the authority are perverse or contrary to the record. In view of that, this court cannot interfere or disturb such findings of fact in exercise of the powers under Article 227 of the Constitution of India.

32.Petitioner has mixed up two things and has not appreciated different and distinct meaning of the definition of wages and the minimum rate of wages fixed under the notification. Both are different meaning and distinct different concept. On behalf of the petitioner, learned Advocate Mr.K.M. Patel has referred to various decisions before this Court and has highlighted issue that ultimately if the total pay packet (of 7th and 15th) is more than the minimum wages, then, the Court should not be worried about the minimum rate of wages fixed under the notification. I have considered each decision referred to and relied upon by the learned Advocate Mr. Patel but not a single decision cited by him is applicable to facts/problems of present case on hand. The submissions of Mr. Patel that the Court should not be worried about the wages fixed under the notification if the total pay packet is more than the minimum wages cannot be accepted. Questions involved in the present petition have not been examined in any of the decisions cited by the learned Advocate Mr. Patel. Contract of employment is limited to the extent of normal working hours,normal working and normal minimum rate of wages. In contract of employment, no incentive is

included. No any other kind of remuneration is included but the workmen are entitled to work during the normal working hours and try to work sincerely and whatever out put may be, irrespective of that, workman is entitled to the minimum rate of wages fixed under the notification. No bargaining is permissible to the right of workman to receive the minimum rate of wages fixed under the notification. According to my opinion, settlement which has been pointed out by the learned Advocate Mr. Patel before this Court is clearly a bargaining with legal right of workmen and the same is is null and void as it purports to reduce the minimum rate of wages fixed under the Minimum Wages Act. Contention of learned Advocate Mr. Patel that section 25 of the Act would not apply to the case of petitioner cannot be accepted for the aforesaid reasons.

33. As per the decision in case of Yadav Stores, Nagpur v. Presiding Officer, Labour Court-III, reported in 1984 Lab IC 756, in a compromise or a settlement between the employer and employee resulting in the employee relinquishing or reducing his claim with regard to wages under the Minimum Wages Act shall be null and void, as his right under the Act is a definite claim.

34.The petitioner has not placed on record contract of employment wherein the workman were initially appointed. Terms and conditions of service can be altered or changed in pursuance of settlement but that cannot be considered to be a contract of employment and it also cannot be contrary to the provisions of law. Here, in light of the facts of the present case, alleged settlement is null and void as it purports to reduce the minimum rate of wages fixed under the Act. Under the pretext of incentive wages, management wants workmen to work on incentive within eight hours and get double wages so that ultimately, idea or intention of the management seems to avoid payment of over time wages. If the management wants particular quantity or out put, then, they should have to require more work means extra work from the workmen. For getting extra work from workmen, management is, otherwise, required to pay over time wages at the double rate while protecting the normal wages fixed under the notification but here, under the pretext of incentive wages, the management has given good bye to the minimum wages under the notification on one hand and has also been avoiding payment of over time wages on the other hand and is, thereby, depriving

workmen of their legitimate right to receive over time wages on one hand and also deprive workmen from getting even minimum wages under the notification. This is nothing but a forced labour as rightly observed by the apex court which cannot be recognized by this court which amounts to clear unfair labour practice adopted by the management with the assistance of recognized union. It is not the case of the petitioner that the provisions of the Minimum Wages Act would not apply to petitioner establishment. It is also not in dispute that the management is covered as a scheduled employment. It is also not the case of the petitioner that the notification fixing minimum rate of wages is not applicable to the petitioner. Since the Act is applicable, all sections thereof and all notifications issued thereunder by the Government would also apply to the petitioner. Therefore, it is the legal obligation on the part of the petitioner to comply with the provisions of minimum wages strictly and not to enter into any such activity which may ultimately result into the bargaining with legal right of workmen which is contrary to the scheme of the Minimum Wages Act. Alleged settlement is clearly a bargaining with the provisions of the Act of

1948. There is no provision under the Act which would compel the workman to give such quantity or out put during the eight hours normal working on the basis of scheme of incentive wages because such efforts on the part of the petitioner, if recognized and approved by this court, would nullify the aim and object of the Act. Therefore, according to my opinion, the management has committed clear breach of various provisions of the Minimum Wages Act, 1948 and bargained with the provisions of the Act on the basis of settlement which is also contrary to the provisions of section 25 of the Act. Such tactics or practice cannot be recognized or approved by this court as it would nullify the object of the Minimum Wages Act, 1948. According to my opinion, this aspect has rightly been examined and appreciated by the authority under the Minimum Wages Act, 1948 in light of various decisions referred to in the impugned order of the minimum wages Authority. In doing so, the authority has not committed any error or irregularity warranting interference of this Court in exercise of the powers under Article 227 of the Constitution of India.

35.This aspect has been examined by the apex court in Sanjit Roy v. State of Rajasthan,

reported in AIR 1983 SC 328 = 1983 LIC 312. In para 5 thereof, the apex court observed as under:

“5. We must then proceed to consider whether on the facts the labour provided by the workers employed in the construction work of Madanganj Harmara Road could be said to be 'forced labour' on the ground that they received wage less than Rs. 7/- per day. Now it was not disputed on behalf of the respondent that the wage paid to a gang of workmen depended upon the work turned out by a particular gang and if it was less than the norm fixed by the Public Works Department, the wage earned by each member of the gang would fall short of the minimum wage of Rs. 7/- per day. But the argument was that this did not involve any breach of Article 23 because if any particular gang turned out work according to the norm fixed by the Public Works Department, the amount paid to the Mate of the gang was enough to give to each workman, on distribution, the minimum wage of Rs. 7/- per day, and it was only if less work was turned out by the gang that the workmen would receive less than the minimum wage of Rs. 7/- per day and this result would ensue not on account of any default on the part of the respondent but entirely because

of the lethargy of the workmen constituting the gang. The workmen, said the respondent. could always earn the minimum wage of Rs. 7/- per day by turning out work according to the norm fixed by the Public Works Department but if they did not do so and in consequence received less than the minimum wage of Rs. 7/- per day the respondent could not be held responsible for breach of the fundamental right conferred under Article 23. This argument does, at first blush, appear to be attractive, but a closer scrutiny will reveal that it is unfounded. If we look at the Notification issued under the Minimum Wages Act, 1948 fixing the minimum wage of Rs. 7/- per day for workmen employed in the construction work, it will be obvious that the minimum wage is fixed per day and not with reference to any particular quantity of work turned out by the workman during the day. Nor does the Notification empower the employer to fix any particular norm of work to be carried out by the workman with reference to which the minimum wage shall be paid by the employer. The minimum wage is not fixed on piece rate basis, so that a particular minimum wage would be payable only if a certain amount of work is turned out by the workman and if he turns out less work,

then the minimum wage payable would be proportionately reduced. Here the minimum wage is fixed at Rs. 7/- per day and that is the minimum wage which must be paid by the employer to the workman so long as the workman works throughout the working hours of the day for which he can lawfully be required to work. The employer may fix any norm he thinks fit specifying the quantity of work which must be turned out by the workman during the day, but if the workman does not turn out work in conformity with such norm, the employer cannot pay him anything less than the minimum wage. If the norm fixed by the employer is reasonable and the workman does not turn out work according to such norm, disciplinary action may be taken against the workman and in a given case, he may even be liable to be thrown out of employment, but he cannot be paid less than the minimum wage, unless, of course, the minimum wage fixed by the Notification under the Minimum Wages Act, 1948 is correlated with the quantity of work to be turned out by the workman. Otherwise it would be the easiest thing for the employer to fix an unreasonably high norm which a workman working diligently and efficiently during the day cannot possibly reach and thereby deprive

the workman of the minimum wage payable to him. There can therefore be no doubt that in the present case the respondent was not entitled to pay less than the minimum wage to the workmen belonging to a gang on the ground that such gang turned out work less than the norm fixed by the Public Works Department."

36. In aforesaid observations, the Hon'ble Supreme Court has clearly emphasized that while fixing minimum rate of wages, only two components are necessary to be considered and except that, no other components are included in the minimum rate of wages, therefore, management cannot compel workmen to give particular quantity of work and production during the normal working hours and it is beyond the scope of fixing minimum rate of wages. Therefore, according to my opinion, decision of the apex court in Sanjit Roy (supra) is clearly an answer to the submissions made by the learned Advocate Mr. Patel before this Court. Said decision of Sanjit Roy (supra) has been considered by the authority under the Minimum Wages Act, 1948 in its order and has rightly considered therefore, order in question would not require any interference of this court. Normal working hours are also fixed under the provisions of the Minimum Wages Act, 1948,

over time is also fixed beyond the normal working hours at double rate and if such colourful devise is approved, then, there will be no necessity to fix normal working hours and over time allowances. Therefore, according to my opinion, the Authority under the Minimum Wages Act, 1948 has given cogent reasons in support of its conclusion and same are also not perverse but correct finding of fact based on correct appreciation of facts and law, therefore, this court cannot reappreciate such evidence and basically, these are the findings of fact based on appreciation of documentary and oral evidence as well as the admission of the management itself to the effect that if the incentive wages paid on 15th are excluded, then, the wages which are paid on 7th may be lesser than the minimum rate of wages fixed under the notification and if a particular workman is unable or not willing to work as per the norms fixed under the settlement, then also, the normal wages which are being paid would be lesser than the rate of wages fixed under the Minimum Wages Act, 1948. Further, by framing the scheme for incentive wages, the management has merged the normal wages with incentive wages which is impermissible in law. Workmen cannot be

deprived of bare minimum wages prescribed under the Act and Notification issued thereunder on the pretext of incentive wages. No industry has right to exist unless it is able to pay its workmen at least a bare minimum wages [See Bakshish Singh v. Darshan Engineering Works, 1994 LLR 61 SC].

37. According to my opinion, the payments made on 7th will be received by each and every workmen but payments made on 15th of each month will not be received by each and every workmen since it is being made in the name of incentive wages and, therefore, those workmen who have not been able to deliver/give the work as per the norms fixed in the settlement will not get it and as such, they cannot be clubbed together while considering the matter at issue.

38. In the definition of wages, whatever allowances are included or any other remuneration, same cannot be considered to be the part of minimum rate of wages fixed under the notification, therefore, in lieu of minimum rate of wages, any kind of other benefits can not be considered to be the minimum wages fixed under the notification.

39. The whole difficulty arises due to intention of Management. The Management has applied Business Brain that how to get more

production during short working hours without additional expenses on. Therefore, incentive wages scheme developed to have temptation for needy workmen. To work eight hours in a day to get double thrice wages while giving target production. This temptation would ultimately spoil the health of workmen. That may not be visualized by workmen. If workmen worked double within eight hours without taking rest, it will ruin the health of workmen. Therefore, Minimum Wages Act, 1948 is providing for 48 hours working maximum in a week for normal working hours, rest and overtime. Such safeguards have their own meaning and sense. That has been ignored by the business brain of the management, therefore, it resulted in such settlement of incentive wages. If such theory is recognized, then, ultimately, after some time of continuous working to have more amount, workmen become helpless to live with healthy condition. The workmen may become victim of any serious disease which can be occupational hazardous. The definition of wages under section 2(h) may be covering any kind of remuneration but question is that in definition of minimum wages, except two components, no other kind of, all or any cash benefits are covered. The management is not

paying any kind of remuneration as specified in section 2(h) except incentive wages. So, management is merely paying incentive wages, except that, no other allowances are paid by management to the workmen. So, wages definition has no meaning. For fixing incentive wages, part of minimum wages out of two components has been merged otherwise excluding incentive wages, workmen cannot get less than prescribed minimum wages. If the management really interested to protect minimum wages, then, they can exclude minimum wages as in tact and fix incentive wages. So, after excluding incentive wages, minimum wages cannot be reduced. SO, management wants to take benefit from poor workmen by taking more hard work within eight hours, avoiding over time payment getting more production in short time while ruining ultimately the health of workmen in long term process which needy and poor workmen may not visualise. Therefore, such colourful devises, applied with business brain is ultimately a clear case of exploitation of workmen in both way by spoiling their health and not paying proper wages for which workmen are entitled legally as a matter of right. Therefore, the Authority under the Minimum Wages has rightly dealt with the matter comprehensively while

lifting veil and find out real intention of implementation of incentive scheme by Management. That itself is contrary to the object and scheme of Minimum Wages Act, 1948.

40. Scope of interference in a petition under Article 227 of the Constitution of India is very limited. Unless and until it is successfully established that the Court below has committed material irregularity and/or jurisdictional error has been committed or that the findings given by the authority below are contrary to facts on record and are, therefore, perverse, this court cannot interfere with such findings of the auhtority below. This aspect has been considered by the apex court in Laxmikant Revchand Bhojwani and another versus Pratapsing Mohansingh Pardeshi, reported in (1995) 6 SCC 576. Relevant observations made by the apex court in para 9 of the said judgment are therefore reproduced as under:

> “The High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. “

In Ouseph Mathai and Others versus M. Abdul Khadir, reported in (2002) 1 SCC 319, the apex court observed as under in para 4 and 5 :

> “It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and

flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Waryam Singh v. Amarnath (1954 SCR 565) this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bose v. Commr. of Hills Division (1958 SCR 1240). In Bhahutmal Raichand Oswal v. Laxmibai R. Tarta (AIR 1975 SC 1297) this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R v. Northumber Compensation Appeal Tribunal, Exparte Shaw (1952 (1) All ER 122, 128) this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam held : (SCC p.460 para 20)

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into

the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see Trimbak Gangadhar Teland 1977 (2) SCC 437). Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to

another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

In Roshan Deen versus Preeti Lal, reported in (2002) 1 SCC 100, the apex court observed as under in paragraph 12:

> “We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide State of UP v. District Judge, Unnao [(1984) 2 SCC 673: AIR 1984 SC 1401]). The very purpose of such constitutional powers being conferred on the High Court is that no man should be subjected to injustice by

violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-produce of an erroneous view of law, the High Court is not expected to erase such justice in the name of correcting the error of law."

In Indian Overseas Bank v. IOB Staff Canteen Workers' Union reported in AIR 2000 SC page no. 1508, apex court observed as under in para 19 of judgment:

19. The learned single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of

fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly one taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken,

> the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of ones own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below."

41. Therefore, there is no substance in these petitions and same are required to be dismissed. Accordingly, these petitions are dismissed. Rule in each of the petitions shall stand discharged. Interim relief granted earlier also shall stand vacated. There shall be no order as to costs.

Consequently, Civil Application No. 1488 of 2006 is also disposed of as not surviving.

(H.K. Rathod,J.)

Vyas

After the Judgment was pronounced in open Court today, learned Advocate Mr. KM Patel appearing for petitioners in these petitions prays to continue interim relief for some time for enabling the petitioners to approach the higher forum. Prayer made by Mr. Patel was opposed by the learned Advocate Mr. Mukul Sinha.

Considering the facts of this case and submissions made by the learned Advocates for the parties, question of paying difference of minimum wages for a limited period from January 1998 to March, 1998 which amounts to staying money decree which normally court cannot stay. Therefore, request made by the learned Advocate Mr. Patel is rejected.

(H.K. Rathod,J.)

Vyas